

CRIMINAL APPEAL No.300 OF 1993 (SJ)

With

CRIMINAL APPEAL No. 344 OF 1993 (SJ)

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Against the judgment and order of conviction dated  
08<sup>th</sup> September and 16<sup>th</sup> September, 1993, passed in  
Sessions Trial No. 107/87 / 125/1992 by Sri Sarju  
Prasad, 3<sup>rd</sup> Additional Sessions Judge, Aurangabad.

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**In Cr. Appeal No. 300 of 1993:**

1. Nezam Khan,
2. Wasi Khan alias Wasi Imam Khan,  
Both sons of Zafruddin Khan, resident of village- Bantara Tola-Balapar,  
P.S. Devkund, District- Aurangabad.
3. Reyaz Khan S/o Abdul Mazid Khan, resident of village- Rampur  
Bharetha, P.S. Kaehwan, District- Rohtas

...Appellants

Versus

The State of Bihar ... ... Respondent

**In Cr. Appeal No.344 of 1993:**

Zafruddin Khan son of late Abu Khan, resident of village-Bantara, Tola-  
Balalpur, P.S. Deokund (Haspura), District- Aurangabad.

...Appellant

Versus

The State of Bihar ... ... Respondent

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For the appellants : M/s Alok Kumar Sinha-1 and Bhola Kumar, Advocates

For the State : Mr. S. N. Prasad, A. P. P.

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**P R E S E N T**

THE HON'BLE JUSTICE SMT. ANJANA PRAKASH

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**Anjana Prakash, J.** Appellants in Cr. Appeal No. 300 of 1993 have been convicted for the offence under sections 304 Part II and 452 of the Indian Penal Code and sentenced to rigorous imprisonment for seven years and one year respectively, whereas, appellant of Cr. Appeal No. 344 of 1993 has been convicted for the offence under section 304 Part II and 452 of the Indian Penal Code and sentenced to rigorous imprisonment for ten years and one year respectively by judgment

dated 8<sup>th</sup> September, 1993 passed by the 3<sup>rd</sup> Additional Sessions Judge, Aurangabad, in Sessions Trial No.107 of 1987 / 125 of 1992.

2. The case of the prosecution reported on 16.6.1986 at 10 hrs. is that on 16.6.1986 at about 6.00 PM the informant saw his mother weeping and was told that his two wives were quarrelling between themselves and thereafter, the father of the first wife i.e. accused Zafruddin Khan and his two sons Nezam and Wasi along with Reyaz came to his house with and thereafter variously assaulted the female members of the house as also the deceased due to which he died four days later.

3. The prosecution in all examined seven witnesses out of whom PW 1 Abdul Hamid Khan reached the place of occurrence after the occurrence and merely saw the accused persons coming out of the house of the informant, whereas, PW 2 Sahiba Khatoon and PW 3 Nuraisha Khatoon are the eye witnesses of the occurrence. PW 4 Md. Shakil Khan is the informant and PW 5 Jasim Khan is on the point of occurrence and PW 6 is Dr. K. K. Singh, who conducted post mortem examination on the dead body of the deceased and PW 7 Ramehwar Trivedi is the Investigating Officer of the case.

4. From the evaluation of the evidence, the admitted position is that information was given four days later after the occurrence upon the death of the deceased and there is no explanation as to why no information was given before such time. The second admitted position is that the family members of the first wife of the informant have been made accused and the submission is that there could be possibility of false implication on account of strained relationship between the parties. It has been submitted that the two eye witnesses i.e. PW 1 and PW 2 are definitely interested and there being no corroboration from any independent source despite the fact that the place of occurrence was a dense populated area, the prosecution case was to be viewed with close scrutiny. The post mortem report also does not support the case of the prosecution, inasmuch, as

even though four persons are said have variously assaulted the deceased, only two injuries were found on the head. For this reason, the submission was that the prosecution case was not fit to be relied upon.

5. On perusal of the evidence, I find that, in fact, there is no independent corroboration of the prosecution and even the post mortem report does not support the case of prosecution. Moreover, the relationship between the parties is delicate and in the background of strained relationship it would not be proper to fully rely on the prosecution case and sustain the conviction after twenty three years. Accordingly, the conviction and sentence of the appellants are hereby set aside and they are acquitted of the charges.

6. In the result, both the appeals are allowed. The appellants are discharged from the liabilities of their respective bail bonds.

**(Anjana Prakash, J.)**

